IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3169 OF 2006

IN

APPEAL (Lodg.) NO. 712 of 2006

IN

SUIT NO. 1754 OF 1980

Shree Sajjan Mills Ltd.... ..... Appellant.

Versus

Ramchandra H. Gupta & Anr. ... Respondents.

Mr. J. G.Shukla i/by M/s.G.H.Shukla & Co.,
for the Appellant.

Ms. Suchitra Patra for Respondent No.1.

CORAM : R. M. LODHA, and
S. A. BOBDE, JJ.

DATED : 5TH DECEMBER, 2006.

P.C.:

The appellant is the original defendant.

2. The appellant suffered exparte decree dated 8th February, 2005. The appeal is filed before this Court on 23rd August, 2006. In filing the appeal, there is a delay of more than 18 months. The present notice of motion has been taken out for condonation of delay.

3. In the affidavit in support of notice of motion, it is stated that the appellant came to know of the exparte decree dated 8th February, 2005 when they received notice dated 2nd April, 2006 from respondent no.1 on 4th April, 2006. Immediately, thereafter in the month of May, 2006, the factory manager of the appellant company visited their advocate to make inquiry in respect of the matter. However, the advocate gave evasive reply and informed the factory manager that the matter has not come on board till date. The factory manager was not satisfied with the reply of their advocate and, accordingly, made inquiries with the department and found that exparte decree had been passed on 8th February, 2005. The application for certified copy of the impugned judgment and order was made on 6th July, 2006 which was delivered on 20th July, 2006 and then the appeal was preferred. It is stated in the affidavit in support of the notice of motion that the appellant company was declared sick industrial undertaking on 7th January, 1994 and that the factory remained closed for all these years.

4. The notice of motion is contested by the respondents. In the reply affidavit, the respondents

set up the case that the appellant was informed of the exparte decree vide letter dated 2nd June, 2005. The said letter was sent by registered post with acknowledgement due, which was received by the appellant on 9th June, 2005. Along with the said letter, the respondent no.1 also sent Xerox copy of the High Court judgment. Thereafter, again on 2nd January, 2006, the letter was sent by registered post writ acknowledgement due to the appellant company referring therein the earlier letter dated 2nd June, 2005, which was received by the appellant on 7th January, 2006. Thereafter also notices were sent to the appellant.

5. From the material placed by respondents, it is clearly seen, that the notice dated 2nd June, 2005, was received by the appellant on 9th June, 2005. Along with that notice, the Xerox copy of the exparte judgment dated 8th February, 2005, was also sent. In this view of the matter, it is clear that the appellant came to know of the exparte decree dated 8th February, 2005, on 9th June, 2005. The submission of the Counsel for the appellant that the letter dated 2nd June, 2005 was not received by the appellant, as the factory was closed, does not deserve to be accepted. The acknowledgement due clearly shows that

notice dated 2nd June, 2005 was received by the company at its registered address. That the appellant company is the sick industrial undertaking or that the factory is closed is not very material. The material placed by the respondents clearly shows that each and every letter sent by the respondents to the appellant has been received by the appellant. Even the appellant admits that they received notice dated 2nd April, 2006 sent by respondent no.1 on 4th April, 2006. That clearly shows that the appellant has been receiving the letters at its registered address.

6. Not only that the appellant has set up false case about non-receipt of the letter dated 2nd June, 2005, which in fact had been received by them on 9th June, 2005, but they also set up the false case that they came to know of the exparte decree for the first time on 4th April, 2006.

7. In our considered view, the long delay of more than 18 months remains unexplained. No cause, much less sufficient cause for condonation of delay has been made out. Notice of Motion is, accordingly, dismissed.

Sd/-

(R. M. LODHA, J.)

Sd/-

(S. A. BOBDE, J.)

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Since the appeal is barred by time, it is liable to be dismissed as such. We order accordingly.

(R. M. LODHA, J.)

(S. A. BOBDE, J.)